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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of) MM Docket No. 95-31
)
Reexamination of the Comparative)
Standards for Noncommercial)
Educational Applicants)

To: The Commission

**Joint Comments of Roaring Fork Public Radio Translator, Inc. and Pitkin County,
Colorado**

1. These Joint Comments are filed on behalf of Roaring Fork Public Radio Translator, Inc. ("Roaring Fork") and Pitkin County, Colorado ("Pitkin County"). Roaring Fork is the licensee of Non-Commercial Educational Station KAJX(FM), Aspen, Colorado, and FM translators that rebroadcast the signal of KAJX. The city of license of KAJX is located in Pitkin County. The terrain in Pitkin County is extremely mountainous (three world-famous ski resorts-- Aspen, Aspen Highlands, and Snowmass, are located within it), and in order to insure that its residents have available a variety of FM and TV programming, Pitkin County is the licensee of numerous FM and TV translator stations, several of which are utilized to serve, either directly or by relay to other translators, residents of Pitkin County who because of terrain blockage are unable to receive the off-the-air signal of KAJX. Roaring Fork and Pitkin County have reviewed the Commission's Further Notice of Proposed Rule Making in this proceeding, released on October 21, 1998. For the reasons set forth briefly below, they oppose the Commission's proposal to select from among mutually exclusive non-commercial radio applicants by lottery and urge that instead the Commission make its comparative determinations through a point system. However, they believe that the point system proposed by the Commission does not take

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into account several factors that should be the basis for the award of points and urge that any point system that is adopted include the award of points on the basis of the additional factors set forth below.^{1/}

2. Roaring Fork and Pitkin County oppose selection by lottery because such selection is determined by chance and ignores meaningful and relevant differences between applicants that affect the extent to which the winning applicant will serve the public interest. Use of a point system would eliminate most, if not all, of the costs and delays engendered by comparative hearings and would in most instances still permit the Commission to make meaningful distinctions between applicants.

3. While Roaring Fork and Pitkin County do not quarrel with the Commission's proposals, as far as they go, for awarding points under a point system, they believe that the following additional factors should be a basis for awarding or withholding points:

- a. Use of facility to maintain service to areas served directly or by relay by translators. As the Commission is aware, there are throughout the United States, and particularly in the western States, translator networks which enhance the service FM and

^{1/} The proposals set forth in these Joint Comments, if adopted by the Commission, could affect the outcome of two potential comparative proceedings in which there are pending before the Commission mutually exclusive applications. The first involves applications for noncommercial FM stations on Channel 205 filed by Public Broadcasting of Colorado, Inc. at Glenwood Springs, Colorado (File No. BPED-960906-MA), and Pitkin County at Carbondale, Colorado (File No. BPED-970312-MA). The second involves applications for noncommercial FM stations on Channel 201 filed by Public Broadcasting of Colorado, Inc. at Glenwood Springs, Colorado (File No. BPED-970924MH), Pitkin County at Glenwood Springs, Colorado (File No. BPED-980814MH), Aspen Public Radio, Inc. for Aspen, Colorado (File No. BPED-980812MI), and Educational Communications of Colorado Springs, Inc. for New Castle, Colorado (File No. BPED-980813MD). Accordingly, a copy of these Joint Comments is being served upon counsel for each of these entities.

TV stations are unable to provided because of mountainous terrain, and some of these translators in turn relay signals to other translators that cannot receive directly off-the-air the signal of the primary station. Roaring Fork and Pitkin County urge that, in situations where parties file applications for non-commercial educational stations on channels on which translators are providing service, either directly or by relay to other translators, to areas the primary station is unable to serve and where alternate translator channels are not available,^{2/} points should be awarded to a mutually exclusive applicant that will rebroadcast all or most of the programming of the primary station over the facilities of a non-translator station that will continue to serve the area served by the displaced translator and will continue to relay the signal of the primary station to other translators. This proposal should be distinguished from a proposal to accord primary status to such translators because it would not result in points for an applicant unless the applicant were proposing to replace the translator with a non-translator station of its own that would then have primary status on the channel. The award of points in this situation would therefore result in a new primary service while maintaining existing service in the new stations' service area and in areas served by translators receiving their input signals from the displaced translator. Points in this situation would not guarantee that a translator licensee proposing minimal facilities would prevail in this situation because of the other factors proposed by the Commission for a point system, but they would provide a means whereby entities providing meaningful local service in part through the use of networks

^{2/} The burden of showing that a replacement channel for a displaced translator is reasonably available should be on the applicant filing an application that would displace the translator.

of translators would have a better chance of maintaining that service when an application is filed that would displace a translator essential for continuing the operation of a translator or translator network. Applications of this kind that maintain the service provided by a translator serving areas both directly and by relay could be awarded multiple points depending upon how extensive is the translator network relying on the translator that would otherwise be displaced.

b. Establishment of a main studio within the service area of the station. The award of points to applicants that propose a main studio within the service area of the station would give a preference to applicants who will provide locally oriented non-commercial service. For decades, the provision of local service has been a critical element in the Commission's public interest determinations. It would therefore be appropriate to accord points to applicants who propose to establish facilities that will enable them to provide local service.^{3/}

c. Local service area presence. The Commission should award a point credit for applicants with an existing local service area presence which enhances their commitment to that service area. Such a commitment is not only evinced by the establishment of a main studio, but also by the applicant's physical location in the service area of the proposed station. Such a "local presence" credit should insure that applicants committing

^{3/} This proposal is not inconsistent with a state-wide plan credit that is part of an existing education plan of a state or municipality as discussed in paragraph 24 of the Further Notice in this proceeding. However, Roaring Fork and Pitkin County would oppose state-wide plan credit for non-commercial entities, other than a state or municipality, that seek to provide state-wide or regional service, usually by means of satellite delivery, to the proposed transmitters without any meaningful element of local service.

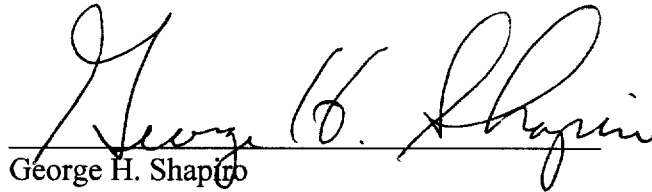
to provide local service are not disadvantaged by applications filed by aggressive “nonprofits,” several of which have already submitted multiple applications in order to obtain control over a large number of noncommercial frequencies, thus gridlocking further development of noncommercial broadcasting.^{4/}

4. Where two or more mutually exclusive applicants receive the same number of points, we propose that the Commission follow procedures analogous to the ITFS procedures set forth in Section 74.913(c) of the rules. Under those procedures, the applicants would have 30 days within which to reach a settlement. Absent a settlement agreement, we suggest that the Commission should then break the tie by granting the application of the applicant with the fewest pending applications. It is extremely unlikely that there will be any proceedings that will not be resolved by these procedures. We believe that mandatory time sharing is unwise: applicants who are unable to agree to a voluntary time sharing plan will surely have difficulties co-existing under a mandated plan, and these difficulties are likely to adversely affect each station’s service to the public. We also oppose breaking a tie by granting the first-filed application, since that approach would simply encourage a “race to The Portals.”

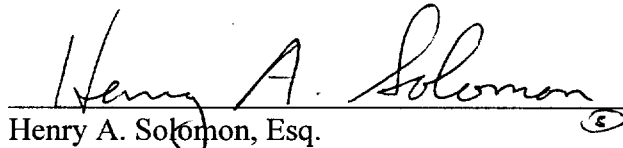
^{4/} For example, Broadcasting for the Challenged, which is not a Commission licensee, has approximately 87 pending full-time noncommercial applications, approximately 77 of which are mutually exclusive with other applications. There are several other instances of mass filings by a single applicant or by several affiliated parties.

5. Roaring Fork and Pitkin County believe that these elements would enhance the point system discussed by the Commission and would result in a selection process that would better serve the public interest than would the Commission's lottery proposal or a point system that did not include these elements.

Respectfully submitted,



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Date: January 28, 1999

Certificate of Service

I, Geneva Stokes, certify that on this 28th day of January, 1999, I caused copies of the attached "Joint Comments of Roaring Fork Public Radio Translator, Inc. and Pitkin County, Colorado", to be served by United States first class mail, postage prepaid, on the following:

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